BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re:	Ethel Frazier Davis L/E Rem: Lana Cheryll Jones District 3, Map 116, Control Map116, Parcel 16, Special Interest 000 Rollback Assessment Tax years 2003, 2004, 2005	)))))	Claiborne County

INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal pursuant to Tenn. Code Ann. section 67-5-1008(d)(3) from an assessment of "rollback taxes" on the subject parcel. The appeal was filed with the State Board of Equalization ("State Board") on March 1, 2007.[1] The undersigned administrative judge conducted a hearing of this matter on May 23, 2007 in Knoxville. The property owner was represented by her daughter, Lana C. Jones. Ms. Jones was accompanied by George M. Coode, Jr., CPA (Knoxville). Judy Myers and Pam Smith, of the Claiborne County Property Assessor's Office, appeared on the Assessor's behalf.

Findings of Fact and Conclusions of Law

Background. The parcel in question, which consists of 76 forested and 19 cleared acres, is located on Barren Creek Road in New Tazewell. The appellant's late husband, Monte L. Davis, became sole owner of this property in 1944. In 1982, Mr. Davis applied for classification of the property as "agricultural land" under the Agricultural, Forest and Open Space Land Act of 1976, as amended – popularly known as the "greenbelt" law.[2] The Assessor's office approved the application, effective in tax year 1983.

On October 25, 2004, for "good and valuable consideration, including the signing of a Promissory Note," Mr. Davis executed a quitclaim deed which conveyed his interest in this property to himself and Ms. Davis. The expressed purpose of the transaction was "to create a tenancy by the entirety."

Mr. and Ms. Davis did not reapply for continuation of the subject property's greenbelt status.[3] Nevertheless, the property remained classified as agricultural (greenbelt) land in tax year 2005.

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[1]Though not actually received by the State Board until March 2, 2007, the mailed appeal form is deemed to have been filed on the March 1 postmark date. State Board Rule 0600-1-.04(1)(b).

[2]The greenbelt law grants preferential tax treatment to owners of qualifying land by basing the assessment thereof on its "present use value" rather than market value. *See* Tenn. Code Ann. sections 67-5-1001 *et seq*.

[3]*See* Tenn. Code Ann. section 67-5-1005(a)(1).

Mr. Davis passed away at the age of 96 in June, 2005. On November 17 of that year, Ms. Davis quitclaimed her ownership interest in the subject property to her daughter Lana C. Jones, retaining a life estate for herself.[4]

On January 6, 2006, the Assessor's office notified Ms. Davis in writing that "[o]ur records indicate that this parcel was previously in greenbelt but is no longer eligible" because of a change of ownership. This notice requested Ms. Davis, as the "purchaser" of such property, to state whether she intended to keep it in the greenbelt program. In a follow-up letter dated February 14, 2006, Assessor Kay M. Sandifer informed Ms. Davis that a forestry plan for the subject property was listed as "pending." But Ms. Davis failed to file a new greenbelt application by the March 1, 2006 deadline emphasized in the Assessor's letter.

There is no indication that an assessment change notice meeting the specifications of Tenn. Code Ann. section 67-5-508(a)(3) was ever sent to the property owner in 2006. However, on or about November 8, 2006, the Claiborne County Trustee issued a property tax notice which included a rollback tax assessment on the subject property for tax years 2003—05 in the amount of $1,757.[5] The property classification (for tax year 2006) shown on this tax bill was "agriculture."[6]

The Assessor has approved Ms. Jones' application for greenbelt assessment of the subject property as "forest land" for tax year *2007*.[7] In this appeal, Ms. Davis seeks relief from the above rollback assessment.

Testimony. At the hearing, Ms. Jones testified that she did not believe the second quitclaim deed of November 17, 2005 had effectuated any change of ownership of the subject property. Nor did she consider her mother to be a "purchaser" of this property when she (Ms. Davis) acquired co-ownership of it from Mr. Davis in 2004.[8] Further, Ms. Jones related that the period between late 2006 and early 2007 was "an extremely tumultuous time" for her and her mother, who was hospitalized in Kansas City during that time. Ms. Jones added that neither she nor Ms. Davis "would have intentionally missed a deadline."

Analysis. It is doubtful that the mere transfer of a remainder interest in agricultural land would necessitate the filing of a new greenbelt application by the holder of such interest. The

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[4]Ms. Davis, of course, had inherited the subject property by virtue of her right of survivorship.

[5]This amount represents the differential between the taxes calculated on the basis of the market value and present use value assessments for the years 2003, 2004, and 2005. *See* Tenn. Code Ann. section 67-5-1008.

[6]Thus the 2006 tax bill on the subject property only amounted to $247.00 (based on a "use value" assessment).

[7]*See* Tenn. Code Ann. section 67-5-1006.

[8]Mr. Coode, whom Ms. Davis and Ms. Jones had consulted regarding this matter, concurred in these views.

Supreme Court of Tennessee has held that this state "follows (the) accepted common law rule, taxing the full value of land in the hands of the life tenant and nothing to the remainderman." Sherrill v. Board of Equalization, 452 S.W.2d 857, 858 (Tenn. 1970). A remainder interest, the Court opined, was not "owned separately from the general freehold" so as to be assessable under Tenn. Code Ann. section 67-5-502(d).

Yet, as Ms. Myers pointed out, the earlier quitclaim deed which created a tenancy by the entirety unmistakably *did* result in a change of ownership of the subject property. That such property remained "in the family," as Ms. Davis put it in an attachment to the appeal form, does not negate this fact. Consequently, termination of the subject property's greenbelt status would have been appropriate in tax year *2005.* Such action would surely have been no less justified one year later, when the property owner named on the original greenbelt application was no longer even alive.

But the record in this proceeding does not establish that the subject property was actually reclassified in tax year 2006. Indeed, the only documentary evidence on this point – the aforementioned tax bill – indicates that the property was still designated as "agricultural" (greenbelt) land. In the recent rollback tax appeal of Bobby G. Runyan (Hamilton County, Tax Year 2005, Initial Decision and Order, August 24, 2006), Administrative Judge Mark J. Minsky found "no legal authority" for the proposition that "greenbelt status simply ceases by operation of law." *Id.* at p. 3. Thus, while new landowners must apply for continuation of a greenbelt classification in their own names, greenbelt status does not automatically expire if the required application is not received by the statutory deadline. Rather, such status terminates only upon the official entry of a different property classification on the tax roll.

Moreover, even assuming that the subject property was not listed as greenbelt land on the 2006 tax roll, the so-called application "deadline" is really a misnomer; for Tenn. Code Ann. section 67-5-1005 provides (in relevant part) that:

> New owners may establish eligibility after March 1 **... by appeal pursuant to parts 14 and 15 of this chapter, duly filed after notice of the assessment change is sent by the assessor**, and reapplication must be made as a condition to the hearing of the appeal. [Emphasis added.]

Had the Assessor sent the assessment change notice contemplated by this statute in 2006, Ms. Davis would have had the right to petition the Claiborne County Board of Equalization for restoration of the subject property's greenbelt classification pursuant to Tenn. Code Ann. section 67-5-1407. Failure of the property owner (or her authorized agent) to appear before the county board in that event would likely have resulted in the new assessment becoming final. *See* Tenn. Code Ann. sections 67-5-1401 and 67-5-1412(b)(1). However, due to the apparent lack of any assessment change notice in this instance, the taxpayer had the right to "appeal directly to the state board at any time within forty –five (45) days after the tax billing date for the assessment." Tenn. Code Ann. section 67-5-1412(e).

This complaint to the State Board was filed more than 45 days after the November 8, 2006 tax billing date. Nevertheless, in consideration of the appellant's medical condition at the time, the appeal may be accepted by the State Board under the following "reasonable cause" provision of Tenn. Code Ann. section 67-5-1412(e):

> The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer **up to March 1 of the year subsequent to the year in which the assessment was made**. [Emphasis added]

Historically, the Assessment Appeals Commission has construed the term *reasonable cause* in this context to include an illness or other circumstance beyond the taxpayer's control. *See*, e.g., Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994).

Though prompted by the 2003—2005 rollback taxes, then, this direct appeal to the State Board also affords the new owner of the subject property (Ms. Davis) the opportunity to "establish eligibility" for continuation of its greenbelt status in tax year *2006*. In the opinion of the administrative judge, the application which the Assessor has already approved for tax year *2007* is sufficient to justify that status. It follows that the appellant should not be liable for rollback taxes on this property.

Order

It is, therefore, ORDERED that the rollback assessment on the subject property for tax years 2003 through 2005 be voided.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is

requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 11th day of June, 2007.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Lana C. Jones
Kay Sandifer, Claiborne County Assessor of Property
John C.E. Allen, Staff Attorney, Division of Property Assessments

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